

IN THE CRIMINAL COURT FOR DAVIDSON COUNTY, TENNESSEE, DIVISION I  
TWENTIETH JUDICIAL DISTRICT AT NASHVILLE

DAVID C. TOLLENCE CLERK

28-DC

STATE OF TENNESSEE

vs.

PERRY AVRAM MARCH

No. 2004-D-3113

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**MOTION TO DECLARE DEFENDANT INDIGENT**

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Comes now the accused, by and through counsel, and moves the Court to determine that the Defendant is indigent for purposes of *State v. Barnett*, 909 S.W.2d 423 (Tenn. 1995), and its progeny.<sup>1</sup> A uniform affidavit of indigency executed by the Defendant, who is in custody and unable to make bail, will be submitted at the hearing of this motion. The accused, however, does not seek appointment of counsel.

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<sup>1</sup>"The due process principle of fundamental fairness requires that a State which prosecutes an indigent defendant assure that defendant of a fair opportunity to present his defense. It is axiomatic that fairness cannot exist where an indigent defendant is deprived by poverty of a meaningful opportunity to defend when his liberty is at stake. The due process principle of fairness applies to all criminal prosecutions, and does not rest upon the severity of the sanction sought or imposed." *Barnett, supra*, at 428; *State v. Harvest*, 967 S.W.2d 829, 832 (Tenn.Crim. App. 1997). The fundamental fairness principle of *Barnett* is not limited to mental health experts. See, e.g., *State v. Scott*, 33 S.W.3d 746, 754-55 (Tenn. 2000) (denial of expert assistance in the field of DNA analysis constituted reversible error where defendant had shown a reasonable likelihood that the assistance would materially assist him in the preparation of his case).

Respectfully submitted,

  
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### CERTIFICATE OF SERVICE

I certify that a correct and complete copy of the foregoing has been hand-delivered to the Office of the District Attorney General, 222 Second Avenue North, Nashville, Tennessee 37201, this 26<sup>th</sup> day of April, 2006.

  
JOHN E. HERBISON